

<b>REALM INDUSTRIES, INC.,</b>	)	<b>AGBCA No. 2003-196-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Cynthia Malyszek, Esquire	)	
Malyszek & Malyszek	)	
1717 K Street NW, Suite 600	)	
Washington, D.C. 20036	)	
	)	
<b>Representing the Government:</b>	)	
	)	
Marion T. Cordova, Esquire	)	
United States Department of Agriculture	)	
Office of the General Counsel	)	
14 <sup>th</sup> and Independence Avenue, S.W.	)	
Room 3329D - South Building	)	
Washington, D.C. 20250-1400	)	

**RULING OF THE BOARD OF CONTRACT APPEALS**

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February 3, 2004

**Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.**

**Opinion for the Board by Administrative Judge WESTBROOK.**

This appeal which arises out of Contract No. 53-3151 between the Farm Service Agency, an agency of the U. S. Department of Agriculture (the Government), and Realm Industries, Inc. of Rockville, Maryland (Appellant), was received at the Board September 29, 2003. Appellant timely appealed an August 12, 2003, decision of the Contracting Officer to withhold \$124,102.31, otherwise due in accordance with contract clause C.9.5. The basis for the withholding was missing Government property.

The Board has jurisdiction to decide this appeal pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, as amended.

The appeal was docketed and Appellant was allowed 30 days from receipt of the docketing letter in

which to file a complaint. The Board received a letter, dated November 26, 2003, from Appellant's counsel stating that Appellant had elected not to file a complaint with the Board as it will pursue its rights in another forum. The Board convened a telephonic conference with the parties at which time Appellant's counsel confirmed that Appellant did not wish to prosecute the appeal at the Board. She indicated that Appellant would file a written request for dismissal. By letter of January 8, 2004, Appellant has requested, in writing, dismissal pursuant to Board Rule 30. In a subsequent telephonic conference, government counsel agreed to a Rule 30 dismissal.

The Board therefore exercises its discretion to dismiss this appeal without prejudice pursuant to Rule 30. If Appellant fails to move for its reinstatement within three years of receipt of this decision, this dismissal will be deemed to be a dismissal with prejudice.

**RULING**

The appeal is hereby dismissed without prejudice. The dismissal will be with prejudice unless Appellant files a motion to reinstate within three years of receipt of this decision.

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**ANNE W. WESTBROOK**  
Administrative Judge

**Concurring:**

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**HOWARD A. POLLACK**  
Administrative Judge

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**JOSEPH A. VERGILIO**  
Administrative Judge

**Issued at Washington, D.C.**  
**February 3, 2004**